VICTOR TAICHUNG MACHINERY WORKS CO LTD

v.

BRIGHT RIMS MANUFACTURING SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[SUIT NO: D5-22-425-1996]
5 DECEMBER 2001

CIVIL PROCEDURE: *Damages - Assessment of damages - Evidence - Calling of witnesses - Whether party intending to prove damage may call any witness - Whether registrar must rely exclusively on evidence of witnesses who had already testified at main trial - Rules of the High Court 1980, O. 35 & 37*

EVIDENCE: *Proof of - Damage - Assessment of damages before registrar - Calling of witnesses - Whether party intending to prove damage may call any witness - Whether registrar must rely exclusively on evidence of witnesses who had already testified at main trial - Rules of the High Court 1980, O. 35 & 37*

This was the plaintiff's appeal against the decision of the registrar allowing the 1st defendant to adduce new evidence through other witnesses – for the purpose of assessing damages – instead of relying only on the evidence of witnesses who had already been called to testify in the main trial. The Court of Appeal had earlier allowed the 1st defendant's counterclaim against the plaintiff and ordered damages to be assessed by the registrar.

Held:

[1] A hearing before a registrar for the purpose of assessing damages is virtually a continuation of the main trial and is conducted for the specific purpose of determining the damages to be awarded to the successful party – whereby the attendance of witnesses and the production of documents may be compelled by a writ of subpoena and whereby the O. 35 (Rules of the High Court 1980) procedure relating to trials in open court will, with the necessary adaptations, apply. Thus in a hearing to assess damages before a registrar under O. 37 Rules of the High Court 1980, the party intending to prove the loss suffered by him is at liberty to call any witness he wishes, subject only to the rules of relevancy and admissibility of evidence. This is so notwithstanding that the witness may have already given some evidence or may have omitted to give some crucial aspect of the evidence

touching upon his loss at the main trial before the judge. As long as that piece of evidence is now necessary to support his claim before the registrar, it may be given at the hearing before the registrar. (pp 551 g-i & 552 a)

[Plaintiff's appeal dismissed.]

Legislation referred to:
Rules of the High Court 1980, O. 35, O. 37 r. 1(3)

For the plaintiff - K Goik; M/s Malik & Partners
For the defendants - J Vicknaraj; M/s Vicknaraj, RD Ratnam, Rajesh Kumar & Assoc

Reported by Gan Peng Chiang

JUDGMENT

Kang Hwee Gee J:

Enclosure 60
This is an appeal by the plaintiff from the decision of the registrar allowing the 1st defendant to adduce new evidence through other witnesses instead of relying only on the evidence of witnesses who had already been called to give evidence in the trial, for the purpose of assessment of damages.

The order to assess damages arose from the successful appeal of the 1st defendant to the Court of Appeal in respect of its counter-claim against the plaintiff.

In allowing the appeal of the 1st defendant on 18 April 2000, the Court of Appeal ordered that the 1st defendant's counter-claim be allowed and that damages be assessed by the senior assistant registrar.

A hearing before the registrar for the purpose of assessing damages is to all intents and purposes a continuation of the trial conducted for **the specific purpose** of determining the damages to be awarded to the successful party whereby the attendance of witnesses and the production of documents may be compelled by writ of subpoena, and whereby the O. 35 procedure relating to trials in open court with the necessary adaptations will apply. (Refer to O. 37 r. 1(3) of the Rules of the High Court. See also *Malaysian High Court Practice* 1998 Desk Edition.)

It follows therefore in a hearing to assess damages before the registrar under O. 37 of the Rules of the High Court the party intending to prove damages suffered by him is at liberty to call any witness he wishes subject only to the rule of relevancy and admissibility of evidence. This is so

notwithstanding that the witness may have already given some evidence or may have omitted to give some crucial aspect of the evidence touching upon his loss or damages at the main trial before the judge. As long as that evidence is now necessary to support his claim before the registrar, it may be given at the hearing before him.

At the end of the day it would still be up to the registrar to decide on the quantum of damages that may be awarded taking into consideration such factors as remoteness, mitigation and the veracity of the claim itself.

The plaintiff's objection at the hearing before the registrar was therefore unfounded.

The appeal is dismissed with no order as to costs.